

HOUSE BILL 4049
By McMillan

AN ACT to amend Tennessee Code Annotated,
Title 45, Title 48, Title 55, Title 56, Title 57, and
Title 67, relative to taxation and regulation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2009, is amended by deleting the language in subdivision (4) and substituting instead the following:

(4)(A) There shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a credit equal to one percent (1%) of the purchase price of industrial machinery purchased during the tax period covered by the return and located in Tennessee. For purposes of this section, "industrial machinery" means:

- (i) "Industrial machinery" as defined by § 67-6-102; or
- (ii) "Computer," "computer network," "computer software," or "computer system" as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware, such as printers, plotters, external disc drives, modems, and telephone units, purchased by a taxpayer in the process of making the "required capital investment" in Tennessee described in § 67-4-2109(c)(1), if as a result of making such purchase and meeting the other requirements set forth in § 67-4-2109(c), the taxpayer qualifies for the job tax credit provided therein;

(B) The industrial machinery credit taken on any franchise and excise tax return, however, shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by any such return before the credit is taken;

(C) Any unused credit may be carried forward in any tax period until such credit is taken; however, such credit may not be carried forward for more than fifteen (15) years;

(D) If any such industrial machinery, for the purchase of which a tax credit has been allowed, is sold or removed from this state during its useful life according to the depreciation guidelines in effect for excise tax purposes, the department shall be entitled to recapture a portion of the credit allowed by increasing the franchise and/or excise tax liability of any taxpayer, for the taxable period during which such machinery was sold or removed, in an amount equal to the percentage of useful life remaining on such industrial machinery at the time of sale or removal times the total credit taken on the purchase of such machinery;

(E) For purposes of the allowance of the credit against franchise and excise taxes under this section, any taxpayer who is a lessee of new industrial machinery and the original user thereof, including a lessee from an industrial development corporation as defined by title 7, chapter 53, or other tax exempt entity, shall be treated as having purchased such machinery during the tax period in which it is placed in service by the lessee, at an amount equal to its purchase price;

(F) If industrial machinery is leased for a period which constitutes less than eighty percent (80%) of its useful life, then the lessee shall be deemed to have purchased only a portion of such machinery, at an amount determined by multiplying the actual purchase price of the machinery by a fraction, the numerator of which is the lease term, and the denominator of which is the useful life of the leased machinery; and

(G) Notwithstanding any provision of law to the contrary, the industrial machinery franchise and excise tax credit provided in this subdivision (4) may be computed by a general partnership that operates a call center in Tennessee that is placed in service by such general partnership on or after June 30, 2003, and that would otherwise qualify for the credit provided in § 67-4-2109(c)(3). Such industrial machinery franchise and excise tax credit shall be computed

as if the general partnership were subject to franchise and excise tax. With respect to the general partnership tax year during which a credit is so computed, a partner in such general partnership that is subject to franchise and excise tax and that directly holds a first tier ownership interest in such general partnership may take a percentage of such credit that equals the total amount of such credit for the general partnership multiplied by such partner's percentage interest in the general partnership on the last day of such general partnership tax year against such partner's franchise and excise tax liability for such partner's tax year that includes such last day. The industrial machinery franchise and excise tax credit passed through from the general partnership to the first tier partner under this section shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this section including carry forward provisions; provided, that in no case shall the credit or a carryover of a credit be taken by a business entity unless it was a partner in the general partnership and subject to franchise and excise tax at the time the credit was earned by the general partnership.

SECTION 2. Tennessee Code Annotated, Section 67-6-102(a)(32)(F), is amended by adding the following as a new, appropriately designated subdivision:

() Charges for any time-share use governed by the Tennessee Time-Share Act of 1981, compiled in §§66-32-101 et. seq., or the Tennessee Vacation Club Act of 1995, compiled in §§66-32-201 et seq., granting the right to occupy any property or other accommodation located in this state, regardless of the location of the purchaser or the seller, regardless of whether the premises are in fact occupied by the purchaser, and regardless of whether such charges are paid in money or otherwise, including the use of previously purchased points or other redeemable credit. “Retail sale,” “sale at retail” and “retail sales price” do not include charges for a time-share estate;

SECTION 3. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following as new, appropriately designated subdivisions:

() “Time-share use” means any contractual right of exclusive occupancy which does not fall within the definition of a “time-share estate” including, without limitation, a vacation license,

prepaid hotel reservation, club membership, vacation club interest, limited partnership or vacation bond;

() “Time-share estate” means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease;

SECTION 4. Section 1 of this act shall take effect upon becoming a law and apply to tax years ending on or after July 1, 2006, the public welfare requiring it. Sections 2 and 3 of this act shall take effect July 1, 2006, the public welfare requiring it.